IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 22879 of 2007(W)

PETITIONER:

V.K.MOHAMMED @ MOHAMMED IBRAHIM, AGED 49
S/O. IBRAHIM ABDULLA, ASHRAF MANZIL, DHARMA NAGAR,
VORKADY VILLAGE & POST, KASARGOD TALUK & DISTRICT.

BY ADV. SMT.R.PADMAKUMARI.

RESPONDENTS:
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1. **THE KUMBLA CO-OPERATIVE BUILDING**
   SOCIETY LTD., FF 102, REPRESENTED BY ITS SECRETARY
   KOIPADY VILLAGE, KUMNBLA PO, KASARAGOD.

2. **SUNIL KUMAR,**
   S/O. SURESH MAYYA, KODI HOUSE,
   VORKADY VILLAGE & POST, KASARAGOD.

3. **SANDEEP, DO..DO..DO....**

BY ADV. SRI.P.SHRIHARI,
SMT.P.VANI,
SRI.K.JAYAKUMAR,
SRI.P.B.KRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.22879/2007-W:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE REGISTERED SALE DEED DTD. 22/11/1995 OF SRO, MANJESHWARAM.

EXT.P.2: COPY OF THE PROCLAMATION OF SALE OF IMMOVABLE PROPERTY ORDERED AS PER E.P. 136/00 IN A.R.C. 427/1994-1995 ON THE FILES OF THE MUNSIFF COURT, KASARAGOD.

EXT.P.3: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN EX. SA 13/05 DTD. 16/12/05.

EXT.P.4: COPY OF THE ORDER IN E.A. 262/06 IN E.P. 136/00 ON THE FILES OF MUNSIFF COURT, KASARAGOD, DTD. 24/05/07.

EXT.P.5: COPY OF THE JUDGMENT IN W.P.(C). 10453/07 DTD. 12/04/07.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.22879 of 2007-W

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Dated this the 23rd day of November, 2007.

JUDGMENT

1.The petitioner purchased an item of property under Ext.P1 from one who is shown to be a transferee of an item of property that was mortgaged to the first respondent in connection with the loan transactions. That resulted in an arbitration award under the Kerala Co-operative Societies Act, sale in execution and a resultant sale certificate in favour of the decree holder society.

2.The petitioner's contention is that he is a bonafide purchaser and therefore, he may be permitted to pay off the outstandings and get back the property.

3.Without going into the contention that the

petitioner is a bonafide purchaser, it can be noticed that the bank had a charge over the property in terms of the mortgage and that ended in an award. Therefore, the question of the petitioner being a bonafide purchaser or not, is irrelevant for consideration. The charge overrides the sale.

4.But the fact remains that the purchaser is none other than the decree holder society. Under such circumstances, if the petitioner moves the first respondent for re-conveyance of the property on such terms as the first respondent may decide, the petitioner will be provided an opportunity for re=conveyance. The writ petition is disposed of accordingly.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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